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EVALUATION OF THE RESULTS ACHIEVED IN THE PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, WITH EMPHASIS ON THE IMPLEMENTATION OF THE RELEVANT HUMAN RIGHTS STANDARDS AND INSTRUMENTS AND ON THE EFFECTIVENESS OF INTERNATIONAL AND REGIONAL METHODS AND PROCEDURES

Achievements and problems of the inter-American human rights system

Report by Marco Tulio Bruni Celli, President of the Inter-American Commission on Human Rights, to the Conference on regional systems of human rights protection in Africa, America and Europe (Strasbourg, 15-19 June 1992)

In the attached report, Mr. Bruni Celli gives an overview of the general features of the inter-American human rights system, consisting of the American Declaration of the Rights and Duties of Man of 1948, the Inter-American Commission on Human Rights, created in 1959 as an autonomous entity to work on the basis of the Declaration, the American Convention on Human Rights adopted in 1969, which entered into force in 1978 and provided a new legal basis for the Inter-American Commission and the newly created Inter-American Court as its two organs which both took up their functions in 1979. Since this paper deals with the achievements and problems of the inter-American system, the Secretariat considered it useful for the evaluation of the effectiveness of regional methods and procedures.

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Introduction

I have the honour to address you, on behalf of the Inter-American Commission on Human Rights, in the context of this important conference on regional systems, in order to describe the main achievements and problems that we have encountered at the inter-American level.

Let me begin my statement by a few remarks about the existence and development of our system, an analysis of which is of crucial importance in order to understand the value of our achievements and the complex nature of difficulties which we confront at the present time.

Historical background

In April 1948, some months prior to the Universal Declaration of Human Rights, the Ninth American Conference convened at Bogotá, adopted the American Declaration of the Rights and Duties of Man which became the first specific proclamation in the international human rights sphere.

In 1959, at the V Meeting of Consultation of Ministers of Foreign Affairs, held at Santiago, Chile, the Inter-American Commission on Human Rights was set up as an entity specifically to monitor the observance of fundamental rights.

Subsequently, in 1965 in Rio de Janeiro, during the II Inter-American Conference the powers of the Commission were extended, authorizing it to deal with individual complaints concerning violations committed in American countries; when the OAS was reorganized in 1967, in conformity with the Protocol of Buenos Aires, the Commission became one of the Organization's main entities.

International instruments: applicable regimes

With a view to strengthening the machinery already established and defining with greater accuracy the human rights coming under the auspices of the Commission, by establishing more effective procedures for their protection, in 1969 a Specialized Conference meeting in San José adopted the American Convention on Human Rights, which entered into force in 1978 and which currently has 24 States parties.

This process evolved steadily, and the General Assembly of the Organization adopted the Inter-American Convention to Prevent and Punish Torture (9 December 1985, in force since 28 February 1987), an Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, "Protocol of San Salvador" (17 November 1988) and a Protocol to the American Convention on Human Rights to abolish the death penalty (8 June 1990).

Regrettably, the last two instruments have not yet entered into force at the international level, since they have not been ratified by the requisite number of States. Those that are in force are not in force for all States in the system. This is a situation which creates considerable gaps and weakens the system, which cannot operate on the same legal bases and within the

conventional frameworks for all members of the Organization. We trust that before long countries will decide in favour of ratification. We also hope for a happy conclusion in the case of an important draft submitted to the Commission some years earlier and which is under study, namely, an inter-American convention on forced disappearance of persons, a crime which has had a grievous impact on our continent and which has been described by various sessions of the General Assembly of the Organization as a crime against humanity.

Consequently, we see that the system has at least two regimes applicable for dealing with the mandate entrusted to it: on one side, there are the provisions of the American Convention, applicable to only those States that are parties to that instrument and, on the other side, there are the provisions of the Declaration, applicable to the remaining States. That gives rise to difficulties of an intellectual and practical nature in view of the fact that the degree of linkage and possibility of seeking measures to achieve by coercion the implementation of the Commission's recommendation is not the same for all countries and a considerable imbalance is generated. Until countries, particularly those such as Brazil and the United States, within whose territories a large proportion of the total population of the continent resides, ratify the American Convention and accept the competence of the Commission and the Court, we shall have to continue with this unequal treatment which unquestionably weakens the system as a whole.

Problems in general

The legal progress achieved, together with the gradual strengthening of the international machinery for the protection of human rights, have brought about the establishment of an institutional basis which has gradually been creating an awareness of the obligation to defend human rights and the values of genuine democracy on the continent. Very considerable inconsistencies remain, however, and although we have succeeded in overcoming, at least formally, the wounds left by the dictatorship of the 1970s in Latin America, the challenges that face the Commission today are no less complex.

It has not been an easy matter for the Commission to cope with the diverse situations our hemisphere has lived through for more than 30 years. With a limited budget and a professional and administrative staff much smaller in number than other intergovernmental organizations that have similar responsibilities, largely dependent on the cooperation which States are willing to extend, the Commission has had to overcome many obstacles in order to discharge the mandate conferred upon it.

Work of the Inter-American Commission on Human Rights

Applying the legal instruments that regulate it imaginatively and with a humanitarian criterion and using the human and material resources available to it in the best possible way, the Commission has used three fundamental methods in order to carry out its work: first, by dealing with complaints of alleged individual violations of human rights and submitting cases to the Court, when it considered it appropriate to do so; second, the general consideration of human rights in specific countries where it is justified, usually by a fact-finding mission, carried out at the initiative of the Commission, at the

request of one of the organs of the OAS, or in response to a request by States themselves; and finally, by the formulation of proposals to Member States and the political organs of the OAS for the adoption of measures to enhance the essential rights of individuals. I shall discuss very briefly each of these facets of our work.

Individual cases

The daily task of the Commission, in the first instance, is to take up individual cases of alleged violations of human rights. This is the most anonymous task and on occasion the most frustrating one when we are confronted with injustices which should never have occurred and which we are not in a position to remedy; however, it is also the task that affords us the greatest satisfaction when, for instance, timely action by the Commission enables a person who was feared missing to be identified as being held by the authorities or enables a political prisoner to be released. If, to our regret, we do not achieve the results hoped for in the majority of cases, each of those in which the end sought is attained itself justifies the existence of and the need for the Commission.

The procedure used in processing the individual cases could be described as quasi-judicial, in that it consists of an adversary process in which we try to clarify, by means of diplomatic initiatives taken vis-à-vis Governments the acts reported and possible responsibility as appropriate, always guided by the ultimate aim of advocating the defence and protection of rights wherever they have been violated.

The Inter-American Court of Human Rights

In so far as the system of protection is being improved and a larger number of countries has recognized the mandatory jurisdiction of the Inter-American Court of Human Rights, the procedure is gradually acquiring its legal connotation which constitutes the most advanced stage reached in the protection of human rights.

A number of individual cases have been brought by the Commission before the Court, and there are important judicial decisions, particularly in relation to cases of disappearance in Honduras which constitute, together with the advisory opinions delivered by the Inter-American Court, highly significant progress in doctrine and jurisprudence. They form the bases for subsequent studies and their intellectual rigour and depth have been recognized.

At the present time, the Commission continues to forward to the Court those cases which meet its requirements and, thanks to the ongoing procedures we are confident of obtaining a positive response from States, not only in respect of the implementation of its decisions but also with regard to the recognition of its mandatory jurisdiction, which, so far has happened in the case of slightly more than one third of the States which are members of the system.

The reports of the Commission: fact-finding missions

The Commission considered that an effective way of defending human rights is to publish reports, which for the purposes of this paper, fall into two categories. First, there are the annual reports on its work submitted by the Commission for the consideration of the General Assembly of the Organization which have, to some extent, lost their political impact since the previous year, as a result of the reforms introduced into the OAS Charter in 1985, whereby these annual reports are submitted for a preliminary analysis to the Organization's Juridical and Political Affairs Committee. In these reports, in addition to briefly describing the main activities undertaken during the period under review, the Commission includes the resolutions adopted on individual cases giving rise to decisions concerning admissibility, follows up the general human rights situation in specific States and formulates recommendations to the political organs in order to call their attention to the need to adopt specific measures to achieve greater and more effective enjoyment of human rights in the member States.

In the second place, the Commission also prepares general reports on the situation of human rights in specific countries. These reports are prepared on the initiative of the Commission, at the request of the political organs of the OAS or even at the spontaneous request of the Governments concerned and are usually preceded, when the circumstances so permit, by a fact-finding mission. In the course of our 20 years of operations, the practice of fact-finding missions has been an excellent way of working and has enabled us to acquire a more comprehensive and objective knowledge of the overall situation of human rights in a specific country. These missions have made it easier to comply with our obligation to be aware of and to observe such situations as well as our fundamental task of cooperating with member States in the promotion of human rights and fundamental freedoms. Moreover, we carry out fact-finding missions on the basis of specific legal provisions contained in both the American Convention and our Statute.

The impact of annual reports and country reports may be very great and on occasion their relevance generates a number of repercussions, both in the international community which focuses its attention on a specific situation described by the IACHR as well as internally where it generates, on one hand, a series of specific undertakings for Governments in response to the assessment made by the Commission and, on the other, makes it possible to publicize, for the information of public opinion in general, issues which are very often ignored by them or concerning which they are not allowed to speak out freely.

The promotion of human rights: achievements and assessment

Another of the tasks which falls to the Inter-American Commission on Human Rights is the promotion of those rights in all member States of the system. Although, as I said earlier, we lack sufficient human and material resources to develop a role that is consistent with the demands and needs of so important a work, I believe that we have made a very real contribution to the creation of a human rights culture in the region.

There is a general feeling, shared by both élite and public at large, about the importance of protecting human rights. It stems not from the modest contribution which we have made to their promotion but rather from the results of our activities in the sphere of the protection and defence of fundamental rights. We enjoy the confidence and respectability conferred upon us by our experience and work, and it is precisely the performance of the arduous daily task of reporting and dealing with the problems of our peoples that has brought about the effective promotion of human rights and the commitment of many men and women in the hemisphere, who plead for better conditions of life, in peace and freedom, for themselves and future generations.

The role of the political organs of the OAS

Both the General Assembly of the OAS and the Meeting of Consultation of Ministers of Foreign Affairs, the Permanent Council of the Organization and the Juridical and Political Affairs Committee are, to some extent, involved in considering, discussing and analysing the annual and special reports submitted to them by the Inter-American Commission on Human Rights in accordance with the rules that regulate the work of those organs.

Usually, there are intense and important debates concluding with the adoption of resolutions and, on occasion, the formulation of specific recommendations to the Commission.

The political circumstances affecting the region are usually reflected in these debates and in the results of the decisions that are finally adopted. At times when the continent was suffering under dictatorial regimes, there was a consensus of strong condemnation of these illegitimate forms of government, and the Commission's work was supported and applauded by the democratic nations.

Paradoxically, today when there are democratically elected regimes, the fear of international condemnation and of the denunciation of irregular situations that exist within States has created an unwillingness on the part of Governments to admit their failings and the Commission has on occasion been the target of attacks and accused of interfering in the internal affairs of States.

Latin America enjoys a democracy which in most cases is no more than purely formal. It is only by recognizing the shortcomings and the combined effort needed to overcome them will it be possible to achieve a genuine democracy, which is the essential basis for the effective and authentic enjoyment of human rights. The Inter-American Commission is engaged in this task of carrying out the noble mission conferred on us by the peoples of the region.

The new challenges

We have been working on the preparation of a legal instrument on the rights of the indigenous populations, for which the Commission has transmitted to all Governments of member countries and to other entities a questionnaire by way of an initial consultation, in which it requests views on those areas thought to be appropriate for inclusion in the new legal instrument. Work has

been going ahead to work out a strategy for achieving an instrument suited to modern national and international doctrine and legislation. The work carried out includes a working meeting with indigenous leaders and legal experts held at the Inter-American Indigenous Institute in Mexico City, the carrying out of two studies, one on the real situation of the indigenous peoples of Latin America and the other on the legal formulation of the demands of these populations and finally an analysis of codification procedures in this field by the United Nations and the International Labour Organisation.

We have advocated studies on the measures needed to enhance the autonomy, independence and integrity of members of the judiciary.

The research work has also begun in order to be able to inform the General Assembly regularly on the observance of the rights of minors, women, disabled persons and minorities.

Responding to the recommendation made to us by the General Assembly at its twentieth regular session, we also submitted to the most recent General Assembly of the Organization a preliminary study on the situation of economic, social and cultural rights in a number of countries in America.

Prospects and conclusions

The international protection of human rights has assumed very great importance on our continent, and has become an essential aspect of the law and international relations in recent decades. Its moral, legal and political foundations are connected with the proclamation and recognition of inalienable rights that belong to all those human beings who inhabit the hemisphere, the acceptance by States of new obligations vis-à-vis their citizens, the modern conception of the role of the international community and a critical review of the achievements of and limitations on the traditional concepts of jurisdiction and sovereignty. The instruments, institutions and machinery for protection have played a highly significant role in the defence of human rights during the four decades since the American Declaration. If it is to continue to be effective, support, recognition, stimulus, modernization and resources are needed more than ever.

Everywhere, but especially on our continent, as is stated in the Charter of the OAS, the struggle for the protection of human rights is closely linked with the quest for democracy and the defence of its institutions. Even when we are aware that, for a variety of reasons, violations of human rights may occur under democratic Governments, we know that these rights will always be better protected where there is freedom to denounce the abuses committed by the authorities, where a political opposition exists which is tolerated and can act without arbitrary constraints, where there is a parliament which can freely discuss issues, situations and problems and can control and monitor the executive power, where an autonomous judiciary exists and works as such, where regular, free, general and participative elections are held and where its

results are respected, where there are possibilities of alternation in the exercise of power. Democracy and peace constitute an environment conducive to the respect, defence and promotion of human rights.

In conclusion, I should like to conclude by stating that our fundamental purpose is the consolidation, in our hemisphere, in the context of democratic institutions, of a system of freedom and social justice based on respect for the essential rights of man.